

CHAPTER NO. 60

HOUSE BILL NO. 2122

By Representative Bone

Substituted for: Senate Bill No. 2039

By Senator Beavers

AN ACT to enact the Wilson County Adequate Facilities Tax.

WHEREAS, Wilson County, Tennessee, has been one of the fastest growing counties in the state for the past ten years, having been impacted by the rapid growth in the standard metropolitan area of Nashville and Middle Tennessee; and

WHEREAS, anticipated growth is expected to continue and accelerate due to growth in Nashville and Middle Tennessee and to the recent and expected growth in Wilson County, its municipalities and neighboring areas; and,

WHEREAS, current projections show that the county population will be 150,000 – 170,000 persons in the year 2020, an increase of more than 60% from 2000 to 2020; there will be a demand for many additional residential dwelling units between 2000 and 2020; and new residential and non-residential development will consume additional acreage in Wilson County, creating the need for additional facilities; and

WHEREAS, projected growth and land use development will cause a demand for county-provided capital facilities, including, but not limited to, schools, roads, jails, ambulances, auditoriums, bridges, corrective, detention and penal facilities, including, but not limited to, jails, workhouses and reformatories, courthouses, culverts, curbs, drainage systems, including storm water sewers and drains, facilities for the handicapped, including physically and mentally handicapped, fairgrounds and fairground facilities, fire department equipment and buildings, flood control, garbage collection and disposal systems, health centers and clinics, highways, major roads, highway and street equipment, law enforcement and emergency services equipment, libraries, memorials, museums, parks, playgrounds, public buildings, recreation centers and facilities, rights of way, roads, schools, transportation equipment for schools, sewers, sewage and wastewater systems, including, but not limited to, collection, drainage, treatment and disposal systems, sidewalks, stadiums, streets, and voting machines; and

WHEREAS, the county's present revenue raising authority is limited by state legislation and relies heavily on intergovernmental transfers, which are not subject to county control, and on property taxes, which would impose the cost of new growth upon existing residents rather than on new residents, and on businesses, which create the demand for the new expenditures; and

WHEREAS, Wilson County is committed to both present and future county residents to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, Wilson County is prepared to impose a fair, equitable, and reasonable share of the cost of providing the necessary public facilities and services on existing residents of the county; and

WHEREAS, the county's present population, employment base, tax base, and budget cannot alone support the additional revenues needed to supply facilities to serve

new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, the continued expansion of the Nashville metropolitan area represents both an extraordinary economic opportunity for the state of Tennessee as well as a potential economic burden on the existing residents of Wilson County, Tennessee; and

WHEREAS, due to these unique circumstances, it is necessary and appropriate that Wilson County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the cost of public facilities necessitated by new development on that development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the state of Tennessee for such additional tax measures to impose costs on those who benefit the most from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Wilson County; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Wilson County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning clearly appears from the context:

(a) "Board of Zoning Appeals" means the Board established in Wilson County pursuant to Tennessee Code Annotated, Section 13-7-106.

(b) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home.

(c) "Building Inspector" means the person designated by resolution of the governing body of Wilson County, who shall be responsible for ensuring a building or structure does not exceed the square footage paid for at the time of obtaining a certificate of occupancy/certificate of compliance.

(d) "Building Permit" means a permit for development issued in Wilson County, whether by the county or any city therein.

(e) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included.

(f) "Certificate of Occupancy/Certificate of Compliance" means a license issued for occupancy of a building or structure issued in the Wilson County, whether issued by the county or any city therein.

(g) "Commercial" means the development of any property for commercial use, except as may be exempted by this act.

(h) "Development" means the construction, building, erection, or improvement to land providing a new building or structure, which provides floor area for residential or commercial use.

(i) "Dwelling Unit" means a room or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, on a daily, weekly, monthly, or long-term basis; physically separated from any other room or rooms or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(j) "Floor Area" means the total of the gross horizontal area of all floors, including basements, cellars or attics, which is heated and/or air conditioned living space, or designed to be finished into heated and/or air conditioned living space at a future date.

(k) "General Plan" means the official statement of the Planning Commission, which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-301, 13-3-302, and 13-4-102. For purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(l) "Governing Body" means the County Commission of Wilson County, Tennessee.

(m) "Industrial" means the development of any property for the purpose of manufacturing a product for retail or wholesale distribution.

(n) "Major Street or Road Plan" means the plan adopted by the Planning Commission, pursuant to Tennessee Code Annotated, Sections 13-3-402 and 13-4-302, showing, among other things, the general location, character, and extent of public ways and the removal, relocation, extension, widening, narrowing, abandonment, or change of use of existing public ways.

(o) "Non-Residential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(p) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, in the plural as well as the singular number.

(q) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented, or used by persons who do not have tax-exempt status.

(r) "Public Building" means a building owned by the state of Tennessee or any agency thereof, a political subdivision of the state of Tennessee, including,

but not necessarily limited to, counties, cities, school districts, and special districts, or the federal government or any agency thereof.

(s) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities, and any other governmental capital improvement benefiting the citizens of the county and/or city as defined in Tennessee Code Annotated, Section 9-21-105(21)(A) and/or (B).

(t) "Residential" means the development of any property for a dwelling unit or units.

(u) "Subdivision Regulations" means the regulations adopted by the Wilson County Regional Planning Commission pursuant to state statutory authorization on February 1, 1973, as amended, by which the county regulates the subdivision of land.

(v) "Zoning Resolution" means the resolution adopted by the governing body pursuant to the state statutory authorization on July 10, 1972, as amended, by which the county regulates the zoning, use, and development of property.

SECTION 3. It is the intent and purpose of this act to authorize Wilson County to impose a tax on new development in the county, payable at the time of issuance of a building permit, or certificate of occupancy, so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of new development in Wilson County, except as provided in Section 6 herein, is declared to be a privilege upon which Wilson County may, by resolution of the governing body of Wilson County, levy a tax at the rate set forth in Section 7.

SECTION 5. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer, and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

- (a) Public buildings;
- (b) Places of worship;
- (c) Barns, outbuildings, or accessory structures used for agricultural or residential purposes;
- (d) Replacement structures for previously existing structures destroyed by fire or other disasters; but only if replaced within one (1) year of the loss;
- (e) A structure owned by a nonprofit organization that is a qualified 501(c)(3) corporation under the Internal Revenue Code;
- (f) A permanent residential structure replacing a single-wide or double-wide mobile home on the same parcel when the mobile home is removed within

thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, providing that the permanent structure is a residence for the owner and occupant of the mobile home; or

(g) A double-wide mobile home replacing a single-wide mobile home on the same parcel where the single-wide mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the double-wide mobile home, providing that the double-wide mobile home is a residence for the owner and occupant of the single-wide mobile home.

SECTION 7.

(a) There is hereby imposed a tax on each unit of covered single-family development, or in the case of multi-family development, on each unit proposed for human habitation in an amount equal to one thousand dollars (\$1,000) per unit. The tax shall be one thousand dollars (\$1,000) per single family unit; two thousand dollars (\$2,000) per duplex; three thousand dollars (\$3,000) per triplex; and one thousand dollars (\$1,000) per unit on any residential development of four (4) units or more. The amount of this tax may be increased or decreased by resolution of the governing body of Wilson County, Tennessee, to be approved by no less than a two-thirds (2/3) vote of the governing body of Wilson County, Tennessee.

(b) The authority to levy a tax on new commercial and/or industrial development is hereby authorized. However, this tax may not be collected unless a resolution establishing the tax and the amount of the tax shall be approved by no less than a two-thirds (2/3) vote of the governing body of Wilson County, Tennessee.

SECTION 8. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined or, if a building permit is not required, at the time of application for a certificate of occupancy by the county or city official duly authorized in such jurisdiction to issue building permits or certificates of occupancy. The revenue collected from this tax shall be collected by the county building official, or other responsible official, and the proceeds deposited with the County Trustee and used exclusively for capital projects, including but not limited to, debt service related to such service or projects, general fund, school fund, special revenue funds, debt service funds, or other capital project funds as designated by resolution of the Board of County Commissioners of Wilson County. If the building permit or certificate of occupancy is issued by a city, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building inspector that the full amount of the tax due the county is paid. No building permit for development as herein defined, or certificate of occupancy if no building permit is required, shall be issued in Wilson County, unless the tax has been paid in full to the county. The issuance of a building permit by any city official, without a certificate from the county that the tax has been paid, shall render the city liable to the county for the sum or sums, that would have been collected by the county had the certificate of tax paid been required by the city.

SECTION 9. The authority to impose the privilege tax or taxes on new development in Wilson County is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land-development regulatory measures granted either by the private or public acts of the state of Tennessee and the imposition of such tax, in addition to any other authorized taxes, fees assessments, or charges, shall not be deemed to constitute double taxation.

SECTION 10.

(a) Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Wilson County and by notifying the official that the payment is made under protest; and

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment.

(b) The Wilson County Board of Zoning Appeals shall hear all appeals. Hearings shall be scheduled within thirty (30) days of the request for appeal, or at the next regular meeting of the Board of Zoning Appeals, whichever is later.

(c) The Board of Zoning Appeals shall render a decision on all appeals within thirty (30) days of the hearing date, unless the hearing is continued from time to time with a majority vote of the Board for further information.

(d) The Board of Zoning Appeals shall act as a quasi-judicial body, whose purpose is to determine the intent of this act, its applicability to the appellant, and to rule upon the interpretation of the official. The Board shall not be bound by formal rules of evidence applicable to the various courts of the state.

(e) Hearings before the Board shall proceed as follows:

(1) The county building official shall explain his or her ruling and the reasons for the ruling.

(2) The appellant shall explain his or her reasons for appealing the ruling.

(3) The Board may request further information from any county official, including, but not limited to the County Executive, County Commissioners, Committee members, the County Attorney, or the County planning staff. The Board shall not have the power of subpoena.

(f) The Board shall deliberate and render a decision by a majority vote. Decisions shall be reduced to writing, and copies shall be sent to all parties and shall become a part of the minutes of the Board. Decisions of the Board of Zoning Appeals shall be final, except that either the building official or the person aggrieved may seek review of the Board's action by certiorari and supersedeas to the Chancery Court of Wilson County, Tennessee, provided, that an application to the court is made within sixty (60) days of the written decision of the Board.

SECTION 11. All taxes or funds collected under the provisions of this act shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Wilson County. This act shall be deemed to create an additional and alternative instrument for Wilson County to impose and collect taxes for the purpose of providing public facilities made necessary by new development in the county and/or any of its cities.

SECTION 13. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by two-thirds (2/3) vote of the county legislative body of Wilson County before September 30, 2003. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by such officer to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 14.

PASSED: May 29, 2003


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 23rd day of June 2003


PHIL BREDESEN, GOVERNOR